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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. 592

CARL G. SWANSON,

Petitioner,

versus

THE FLORIDA BAR, ET AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

CARL G. SWANSON, appellant below, prays that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Fifth Circuit entered in this case on June 13, 1967. (Appendix A-1, Record 110).

OPINION BELOW

The opinion and judgment of the Court of Appeals for the Fifth Circuit, dated June 13, 1967, sought to be reviewed,

has not been reported, but is attached hereto and made a part of this Petition in Appendix A-2, Record 108.

JURISDICTION

Jurisdiction of this Court is invoked under Title 28 United States Code, Section 1254(1).

Jurisdiction of the United States Court of Appeals below was based on Title 28, United States Code, Section 1291.

The jurisdiction of the United States District Court for the Middle District of Florida is based on United States Code, Title 28, Section 2281 et seq.

QUESTIONS PRESENTED

1. Whether or not the so-called "Integration Rule" made and adopted by the Supreme Court of Florida for the trial and discipline of lawyers affords due process of law under the Fourteenth Amendment of the Constitution to the United States.

2. Whether or not a rule, statute or law designed to discipline and disbar attorneys which provides:

a. That the Board of Governors of The Florida Bar appoints a grievance committee.

b. That an investigation is made by such appointed grievance committee.

c. That the grievance committee reports to the Board of Governors.

d. That the Board of Governors find probable cause.

e. That the Board of Governors appoints a referee for trial.

f. That the Board of Governors appoints a prosecutor.

g. That the referee reports to the Board of Governors.

h. That the Board of Governors reviews the Referee's report.

i. That the Board of Governors enters a judgment.

j. And other invidious proceedings inflicted upon a disciplined attorney by the Board of Governors affecting the accused's right to practice law before the courts;

is unconstitutional on its face as offending against the Fourteenth Amendment of the Constitution of the United States, or unconstitutional as to petitioner as offending against said Fourteenth Amendment of the Constitution of the United States, who is being tried under such rule, law or statute.

3. Whether or not a lawyer now being tried under a rule, statute or law, by a "committee of lawyers" who act as investigator, prosecutor, judge and jury in a disciplinary proceeding for breach of ethics, affords the accused attorney due process of law under the Fourteenth Amendment to the Constitution of the United States of America.

CONSTITUTIONAL PROVISION

The Fourteenth Amendment of the Constitution of the United States in the pertinent part provides, "NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW."

tor FRED H. KENT, JR., filed charges against Petitioner for alleged breach of ethics in the name of The Florida Bar in accordance with Rule 11.06(2)(5).[4/]

The Petitioner did not and does not attack Rule 11.14 as unconstitutional and void.[5/]

The Petitioner CARL G. SWANSON then filed a Motion to Quash the proceedings challenging the constitutionality of the Integration Rule (except as stated) and The Supreme Court of Florida refused to pass upon the question. (See 172 So.2d 448, 449, in the matter of *State of Florida, ex rel, The Florida Bar v. Carl G. Swanson.*)

Petitioner on April 8, 1966, filed in the United States District Court, Middle District of Florida, a Complaint, seeking an injunction against The Florida Bar to prevent trial under the present Integration Rule, challenging the constitutionality of Article 11 of the Integration Rule, except Rule 11.14. (R-1).

Federal Judge Wm. A. McRae, *a former president of The Florida Bar,* refused to appoint a three-judge Federal court to determine the constitutional question and granted Motion of the Florida Bar to dismiss Petitioner's Complaint in that court. (R. 99) (Petitioner was given no opportunity to amend.)

Appeal was made to The United States Court of Appeals for the Fifth Circuit (R. 102), and that Court affirmed the judgment of the United States District Court for the Middle

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4/ The alleged charges are set out in the record. (R. 48, 49)

5/ Rule 11.14 provides jurisdiction by judges of the Circuit Court and the District Court of Appeals (Florida's lower courts) for discipline and disbarment of attorneys in the proceedings before the *courts of this state.* (A-35)

District of Florida. (A-1, R. 110). The Opinion is in the Record (A-2, R.108).

REASON FOR THE GRANTING OF THE WRIT

Article 11 of the Integration Rule shows on its face that a committee of lawyers known as the Board of Governors through its brother members, agents, appointees and servants of the Board of Governors, acts as investigator, prosecutor, judge and jury, as follows:

> Rule 11.03: (2) (c) The Board of Governors appoints the grievance committees. (A-14)
>
> Rule 11.04: (1) (a) Investigation is made by such appointed grievance committee. (A-15)
>
> Rule 11.05: (1) The grievance committee reports to the Board of Governors. (A-17)
>
> Rule 11.05: (3) The Board of Governors finds probable cause. (A-18)
>
> Rule 11.05: (4) The Board of Governors appoints a referee for trial. (A-18)
>
> Rule 11.06: (4) (a) The Board of Governors appoints a prosecutor. (A-19)
>
> Rule 11.06: (9) (c) (i) The referee reports to the Board of Governors (A-22)
>
> Rule 11.06: (9) (c) (i) The Board of Governors reviews the referee's report. (A-22)
>
> Rule 11.06: (9) (c) (ii) The Board of Governors enters the judgment. (A-22)

Rule 11.10: et seq. Provides other insidious proceedings before the Board of Governors attempted proceedings for reinstatement. (A-27)

Certainly the prosecution of the Petitioner is unconstitutional as to him, because the complaint has been filed and the Petitioner is being tried under the Integration Rule attacked.

The power of the Supreme Court of the United States to restrain unconstitutional State Statutes can not be challenged.

Ex Parte Young, 209 U. S. 123.

The Supreme Court of the State of Pennsylvania has ruled unconstitutional similar rules of the trial of attorneys in the case of

In Re Schlesinger, Pa 1961, 172 A2d 835, as offending against the Fourteenth Amendment to the Constitution of the United States, where committees of lawyers under the same and similar rules attempted to disbar Schlesinger.

Further in support of the Petitioner's position that due process is not afforded, Petitioner respectfully refers this Honorable Court to the statement of The Honorable William O. Douglas, Justice of the Supreme Court, in his book, "We, the Judges," which reads as follows: (The footnotes here are ours.)

"THE RIGHT TO A FAIR TRIAL

"There was a time in the Western World when a man could be condemned by edict of a rule or by a law enacted by the legislative body. The latter is the notorious bill of attainder, outlawed by Article 1, Section 10 of the Constitu-

tion, so far as States are concerned, and by Article 1, Section 9, so far as the "Federal Government is concerned. Historically a bill of attainer was a legislative act condemning a man to death. The infliction of punishment less than death was a bill of pains and penalties. But the latter is included within a bill of attainder as used in the Constitution. Cummings v. Missouri, 4 Wall. 277, 323. Condemning a man by legislative decree that imposes fines, penalties, or disabilities upon him has become a rare thing since the adoption of the Constitution. A few such practices have, however, appeared and the Court has reacted decisively to them.

"*Cummings v. Missouri*, 4 Wall. 277, involved a provision of the Missouri Constitution, adopted while passions of the Civil War raged, which required persons practicing a profession to take an oath of loyalty that they had never given aid or comfort to persons engaged in hostility to the United States nor been a member of an organization inimical to the Government of the United States. *Ex parte Garland*, 4 Wall. 333, decided the same day, involved an Act of Congress which required attorneys practicing before the Supreme Court to take a similar oath. The purpose of these laws was to penalize those who had been active in the Civil War on the side of the South or sympathetic with it.

"The deprivation of civil rights for past conduct was held to be punishment prohibited by the Constitution, unless through a judicial trial.[6/] And even a judicial trial could not

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6/ The Florida Bar called their Rules administrative in character. Rule 11.06(3a) (A-19)

It is an anomaly to say there are degrees of honesty. The Integration Code is not a guideline for the young attorney either in ethics or honesty, as it should be, but it is penal in all respects when operated as here, by a board, bureau, commission or authority which

reach back and make unlawful an act which was not proscribed when committed, for that would be an ex post facto law, also "outlawed by the Constitution, and see Stewart v. Keyes, 295 U.S. 403. See Article 1, Section 9 and 10. The fact that a class of people was condemned, rather than named individuals, made the law no less a bill of attainder. The fact that the condemnation was conditional likewise made no difference. For the innocence of the accused would have to be established by the expurgatory oath. In other words the particular laws assumed the guilt of these people and adjudged and imposed the penalty conditionally. Said the Court in the Cummings case, 'To make the enjoyment of a right dependent upon an impossible condition is equivalent to an absolute denial of the right under any condition, and such denial, enforced for a past act, is nothing less than punishment imposed for the act.'

"And in the Garland case, the Court said, *'The attorney and counsellor being, by the solemn judicial act of the court, clothed with the office, does not hold it as a matter of grace and favor . . . It is a right of which he can only be deprived by the judgment of the court, for moral or porfessional* (sic) *delinquency,'*7/ Id., 379. So the bills of attainder in both the Cummings and the Garland cases were nullified.

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needs no expertise to determine a serious violation of ethics or honesty.

Solicitation is a matter of degree, whether it be by establishing a reputation for honesty and integrity, or the hope for reward in attending conventions (delivering an address) or the attending or accompanying "social functions" where compensation or other favor may be gained.

A violation of ethics or honesty should be tried in an open public forum, where a man may be convicted, acquitted or discharged like any other penal case.

7/ Contrary to this holding of the United States Supreme Court the Florida Integration Rule provides, "A license to practice law *confers no vested right* in the holder thereof, but is a conditioned privilege *revocable* for cause. Rule 11.02 (A-11)

"The requirements for a fair trial are varied. They are not satisfied, if the court is a partial, prejudiced tribunal bent on conviction. It is fatal if the court is an instrument of the prosecution or has interests aligned with one side of the controversy. Our leading case is Tumey v. Ohio, 273 U. S. 510, in which the late Chief Justice Taft wrote for a unanimous Court. Under Ohio law the mayor of a village could try violations of the liquor law. He tried and convicted one Tumey and fined him $100. The case went through the Ohio courts and reached the Supreme Court on a question of due process of law under the Fourteenth Amendment. As compensation for hearing these liquor cases, the local judge was authorized to retain the amount of the costs in each case. No fees were paid him, if a defendant were acquitted. He was compensated for his services as a judge only if he convicted the defendant. The judge therefore had a direct, personal, pecuniary interest in reaching a decision against the defendant. Such a hearing, the Court held, denied an accused due process of law. 'A situation in which an official perforce occupies two practically and *seriously inconsistent positions, one partisan and the other judicial,* necessarily involves a lack of due process of law in the trial of defendants charged with crimes before him.'

"A rather bizarre use of the summary contemp power is recorded in the recent case of *In re Oliver,* 333 U. S. 257. This was the famous one-man grand jury case from Michigan. In 1917 Michigan vested its judges with investigatory powers in order to make probes into the alleged misconduct of public officials more effective. The law combined in one man the investigatory and the judicial functions. The judge was authorized to appoint prosecutors, detectives, and aides. The judge sat in secret seesions, (sic) summoning witnesses before him. The power was an ambulatory one, as the judge could

sit anywhere, in the courthouse or in a hotel room.[8/] A witness could be asked questions on all subjects and need not be advised of his privilege against self-incrimination. If he failed to appear, or failed to answer material questions, or if the judge believed his evidence false, evasive, or deliberately contradictory, the judge could find him guilty of contempt and fine him not more than $100.00, or imprison him for 60 days, or impose both penalties. If, after sentence, the witness answered the questions satisfactorily, the judge in his discretion might commute or suspend the sentence. If the witness was recalcitrant, he could be resummoned at the end of his first sentence, asked the questions again, and be sentenced a second time if he again failed to answer or if the judge felt once more that his answers were not adequate.

"The Court held the procedure unconstitutional under the Due Process Clause of the Fourteenth Amendment. *The secrecy of the trial was at war with the tradition of the public trial in Anglo-American jurisprudence.* The summary nature of the proceedings also violated due process. For the accused was deprived of his day in court -- he had no reasonable notice of the charge against him; he had no opportunity to be heard in his own defense; he had no right to examine witnesses against him; he had no opportunity to offer testimony; and he was not represented by counsel. Due process requires 'a charge fairly made and fairly tried in a *public tribunal.*'[9/]

8/ Little is to be gleaned from the Integration Rule of any rules promulgated for the Board of Governors of The Florida Bar, except Rule 11.03(f), which provides, "The Board of Governors of The Florida Bar shall supervise and *conduct* disciplinary proceedings.." (A-13), and with such power meet when they choose, where they choose, in hotel rooms with closed doors where no Respondent is permitted to enter.

9/ The meeting of the grievance committee behind closed doors and the meeting of the Board of Governors behind closed doors constitutes a double lock to prevent a charge fairly tried in a public tribunal.

"Due process also requires, as Justice Rutledge demonstrated in a concurring opinion, that the *judicial function be kept separate from the investigative and prosecuting functions.* Certainly the combination of the three in one man is foreign to Anglo-American jurisprudence as it evolved after the abolition of the Star Chamber and the High Commission in 1641. As Justice Rutledge said, "This aggregation of powers and inherently concomitant denial of historic freedoms were unknown to the common law at the time our institutions crystallized in the Constitution.' Id., 279. See In re *Murchison v. White,* 349 U. S. 133.

"There are also the safeguards of the Sixth Amendment. That Amendment reflects the resolve of Americans that no man's life, liberty, or property shall be forfeited, and no man punished, except upon *'a charge fairly made and fairly tried in a public tribunal free of prejudice, passion, excitement, and tyrannical power.* Thus, as assurance against ancient evils, our country, in order to preserve 'the blessings of liberty,' wrote into its basic law the requirement, among others, that the forfeiture of the lives, liberties or property of people accused of crime can only follow if procedural safeguards of due process have been obeyed.' Chambers v. Florida, 309 U. S. 227, 236-237."

We submit that although a State has broad powers to regulate the practice of law within its borders, in so doing it can not ignore the rights of individuals secured by the Constitution. A state can not foreclose the exercise of Federal Constitutional rights by mere labels (*such as an appeal after conviction*). See

> Brotherhood of Railroad Trainmen, Petitioner,
> v Virginia ex rel Virginia State Bar;

and it has been well settled since the case of *N.A.A.C.P. v*

Bennett, 3 LawEd 2d 1375, 360 U.S. 471, and cases thereafter to this date following that case, that it is unnecessary to exhaust administrative or state remedies, and puts to an end for all time requirements that parties repair to the State courts on Federal questions (in recognition of the fact that one does not have to wait until he is on the gallows with a noose around his neck to plead that a law under which he is being tried is unconstitutional); and this is as it should be, for it was never intended that only complex and unrewarding labors must be performed to procure a ruling on the Federal Constitutionality of trial and proceedings such as these; this was the case in the proceeding struck down where the prosecution and defense was integrated. *Amos Treat & Co., Inc. v. Securities and Exchange Commission*, 306 Fed Rep 2d, 260.

Petitioner has here demonstrated that the so-called Integration Rule of The Florida Bar is substantially of the same type and caliber held unconstitutional in the Schlesinger case (supra).

These rules are not only unconstitutional on their face, but certainly as applicable to the Petitioner on trial are unconstitutional and contrary to everything the Supreme Court of the United States has ever said.

These proceedings (without a Statute of Limitations even for the most minor mistake or offense) are conducted by lawyers in the same profession, none of whom have had any experience as a judge, and each of whom may have his own idea as to what constitutes legal moral deficiency, substituting his own idea, being guided by others (Lawyers have enemies in the profession as well as friends, and this is necessarily so because they constantly oppose each other in their

views.) and each of whom has a personal interest at stake in ridding the profession of an attorney, under the belief that he himself would receive a benefit. This lowers the standard and grade of the profession and prevents young lawyers from espousing new ideas for fear of what they may do in the prosecution or defense of a claim, the sword of Damocles would come down on his head; or at least such a proceeding begun, where pressure, nerves and tension become apparent, followed by a war of nerves, cold war and finally the hot war where the revocation of his license is decided behind closed doors, not even affording a lawyer the rights of the most notorious criminal.

Moreover, Petitioner having demonstrated that under the rules of The Florida Bar, The Florida Bar, its officers, agents, committees, etc. act in the role of investigator, prosecutor, judge and jury.

CONCLUSION

There is a constitutional question presented here.

No court denies that this constitutional question is here presented.

The Supreme Court of Florida and the Court of Appeals for the Fifth Circuit have stated the question is premature. We submit that this question may be premature for the Florida Bar, but it is not premature as to the accused; and respectfully submit that the Writ of Certiorari be granted.

Respectfully submitted,

/s/ Will O. Murrell

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Certificate of Service

I DO HEREBY CERTIFY that three copies of the foregoing Petition for Certiorari and Appendix were served on Honorable William H. Adams, III, attorney for the Respondents, The Florida Bar, Noah H. Jenerette, Esquire, and Fred H. Kent, Jr., Esquire, by mail, by depositing the same in the United States Post Office in a regular receptacle for outgoing mail, properly addressed to his proper post office address, and attached thereto sufficient first class postage to prepay delivery of same, this 7th day of September, 1967.

/s/ Will O. Murrell

.....

Attorney

APPENDIX

United States Court of Appeals
For the Fifth Circuit

October Term, 1966

D. C. Docket No. 66-278 CIV-J

CARL G. SWANSON,

Appellant,

versus

THE FLORIDA BAR, ET AL.,

Appellees.

Appeal from the United States District Court for the Middle District of Florida.

Before TUTTLE, Chief Judge, WASHINGTON* and SIMPSON, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, Carl G. Swanson, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

June 13, 1967

*Senior Circuit Judge of the D. C. Circuit, sitting by designation.

Issued as Mandate: July 6, 1967

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 24193

CARL G. SWANSON,

Appellant,

versus

THE FLORIDA BAR, ET AL,

Appellees.

Appeal from the Middle States District Court for the Middle District of Florida.

(June 13, 1967.)

Before TUTTLE, Chief Judge, WASHINGTON* and SIMPSON, Circuit Judges.

PER CURIAM: We conclude that in this suit to invalidate the so-called "Integration Rule" of the Florida Supreme Court and particularly those provisions dealing with the procedures for the disciplining of members of the bar, there is no substantial federal constitutional question presented, therefore the single-judge district court had the power to dispose of the complaint.

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* Senior Circuit Judge of the D. C. Circuit, sitting by designation.

In light of the fact that there is no merit in the contention that the Integration Rule violates appellant's 14th Amendment rights on its face, we agree with the Florida Supreme Court which, in denying a motion to quash the disciplinary proceedings, giving rise to this suit said:

> "There can be no doubt of the power of this Court to authorize such investigations for the purpose of determining whether formal charges shall be made against the respondent. If there is any merit to the movant's contention concerning the validity of the procedures prescribed by the Integration Rule for disciplining members of The Bar—a question which we do not here decide—it is premature."
> 172 So. 2d 448, 449.

The absence of any constitutional defect on the face of this Integration Rule warranted the trial court's action in dismissing the complaint.

The judgment is AFFIRMED.

APPENDIX

INTEGRATION RULE OF THE FLORIDA BAR

As Amended to January 1, 1967

Preamble

Pursuant to the inherent powers of the Supreme Court of Florida, the Integration Rule of The Florida Bar is hereby amended to read as follows:

To inculcate in its members the principles of duty and service to the public, to improve the administration of justice, and to advance the science of jurisprudence, the following principles are expressly adopted by this Court:

(a) The Florida Bar, a body created by and existing under the authority of this Court, is charged with the maintenance of the highest standards and obligations of the profession of law, and to that end is vested by this Court, in the exercise of its inherent powers over The Florida Bar as an official arm of this Court, with the necessary powers and authority.

(b) Attorneys admitted to practice law in Florida are a part of the judicial system of Florida and officers of its courts.

(c) Persons of integrity and good character only shall be permitted to practice law in Florida.

(d) This Court has the inherent power and duty to prescribe the qualifications that shall be required for admission to practice law, to admit suitable persons to practice law, to prescribe standards of conduct for lawyers, to determine what constitutes grounds for the discipline of lawyers, to discipline for cause attorneys admitted to practice law in Florida, and to revoke the license of every lawyer whose unfitness to practice law has been duly established.

(e) All of the members of The Florida Bar have taken an oath to support the Constitution and the laws of this state and of the United States. As officers of the court, they are charged with obedience to these laws, both in and out of court, and with the duty to observe the high standards of the profession. A license to practice law is a proclamation by this Court that the holder is one to whom the public may entrust professional matters. The lawyer must be true to that trust and to his professional relationship to his client, whether such client be a public body or a private individual.

• • • • • •

Article II. Membership

1. All persons licensed to practice law in this state shall be active members of The Florida Bar immediately upon the issuance of license to practice by this Court.

2. No person shall engage in any way in the practice of law in this state unless such person is an active member of The Florida Bar in good standing except that a practicing attorney of another state, in good standing, who has professional business in a court of record of this state may, upon motion, be permitted to practice for the purpose of such business only, when it is made to appear that he has associated and appearing with him in such business an active member of The Florida Bar.

• • • • • •

THE FLORIDA BAR

Article XI. Rules of Discipline

Rule

11.01: **Principles and Definitions.**
- (1) Notice and knowledge of rules.
- (2) Process.
- (3) Definitions.
  - (a) The accused or accused attorney.
  - (b) Bar counsel.
  - (c) The Board, or the Board of Governors.
  - (d) Complainant or complaining witness.
  - (e) This Court, or the Court.
  - (f) Court of this State.
  - (g) Executive Committee.
  - (h) Executive Director.
  - (i) Probable cause.
  - (j) Referee.
  - (k) Respondent.

11.02: **Breaches of Discipline.**
- (1) Oath.
- (2) Code of ethics.
- (3) Moral conduct.
  - (a) Standards
  - (b) Crime.
- (4) Trust funds and fees.
- (5) Solicitation.
- (6) Discipline by foreign jurisdiction.

11.03: **Disciplinary Agencies.**
- (1) The Board of Governors of The Florida Bar.
  - (a) Executive Committee.
  - (b) Executive Director.
- (2) Grievance committees.
  - (a) Circuit grievance committees.
  - (b) Special grievance committees.
  - (c) Membership, appointment.
  - (d) Terms.
  - (e) Officers.
  - (f) Oath.
  - (g) Removal.
  - (h) Quorum, vote.
- (3) Referees.
- (4) Staff counsel.
- (5) Bar counsel.
- (6) Jurisdiction and powers.
- (7) Disqualification as trier and attorney for respondent.

INTEGRATION RULE

11.04: Investigation by Grievance Committee.

(1) Purpose.
  (a) Investigation.
  (b) Non-adversary.
  (c) No delay for civil or criminal proceedings.
(2) The accused.
(3) Testimony of witnesses; contempt.
(4) Complainant or complaining witnesses.
(5) Record and report of grievance committee.
  (a) No recommendation of probable cause.
  (b) Recommendation of probable cause.
(6) Status, reports.

11.05: Review of Grievance Committee Report; Finding of Probable Cause and Assignment for Trial.

(1) Review of grievance committee report.
(2) Finding of no probable cause.
(3) Finding of probable cause.
(4) Assignment for trial.

11.06: Trial by Referee and Entry of Judgment.

(1) Venue.
(2) Style of proceedings.
(3) Nature of proceedings.
  (a) Administrative in character.
  (b) Discovery.
(4) Bar counsel.
  (a) Appointment.
  (b) Duties.
(5) Pleadings.
  (a) Complaint; consolidation and severance.
    (i) Filing.
    (ii) Content.
    (iii) Joinder of charges and respondents; severance.
  (b) Answer and motion.
  (c) Reply.
  (d) Disposition of motions.
  (e) Filing of pleadings.
    (i) Complaint and answer.
      (A) Service.
      (B) To referee.
    (ii) Subsequent pleadings.
  (f) Amendment.
(6) Notice of final hearing.
(7) The respondent.
(8) Complaining witness.

11.06: Trial by Referee and Entry of Judgment—Continued
- (9) Findings and judgment.
  - (a) Record and report of referee.
  - (b) Statement of parties.
  - (c) Review and entry of judgment.
    - (i) Review.
    - (ii) Judgment.
    - (iii) Filing.
- (10) The record.
  - (a) Reporting of testimony.
  - (b) Contents.
- (11) Plea of guilty by accused or respondent.
  - (a) Before filing of complaint.
  - (b) After filing of complaint.
  - (c) Unconditional.
  - (d) Procedure.
- (12) Appellate review.

11.07: Disciplinary Measures.
- (1) Private reprimand.
- (2) Probation.
- (3) Public reprimand.
- (4) Suspension.
- (5) Disbarment.

11.08: Discipline upon Conviction.
- (1) Determination or judgment of guilt.
- (2) Suspension by trial court (Florida).
  - (a) Petition to modify or terminate suspension.
  - (b) Continuation of suspension until final disposition.
  - (c) Termination of suspension.
- (3) Suspension by Supreme Court.
- (4) Disciplinary judgment after conviction.
- (5) Appellate review.

11.09: Resignation Pending Disciplinary Proceedings.
- (1) Definition.
- (2) Petition for leave to resign.
- (3) Judgment.
- (4) Appellate review.
- (5) Delay of disciplinary proceedings.

11.10: Reinstatement.
- (1) Petition, form, contents, fingerprints.
  - (a) Filing.
  - (b) Form and exhibits.
- (2) Deposit for costs.
- (3) Reference of petition for hearing.
- (4) Attorneys for the Bar.

11.10: Reinstatement—Continued
(5) Procedure.
(6) Hearing, Notice, Evidence.
(a) Notice.
(b) Appearances.
(c) Failure of petitioner to be examined.
(7) Prompt hearing; report.
(8) Notice of reinstatement committee's or referee's report.
(9) Statement in opposition or support.
(10) Judgment by Board of Governors.
(11) Appellate review.
(12) Successive petitions.

11.11: Appellate Review.
(1) Appellant.
(2) Appointment of bar counsel.
(3) Procedure.
(a) Petition for review.
(b) Record on appeal.
(c) Briefs.
(d) Oral argument.
(e) Burden upon appellant.
(f) Judgment of Supreme Court.
(4) Precedence of proceedings.
(5) Extraordinary writs.
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Rule 11.01: Principles and Definitions

(1) Notice and knowledge of rules. Every member of The Florida Bar is within the jurisdiction of this Court and its agencies under this Rule and is charged with notice and held to know the provisions of this rule and the standards of ethical and professional conduct prescribed by this Court.

(2) Process. Every member of The Florida Bar is charged with notice of the provisions of Section 6 of Article II relating to change of mailing address or military status and that mailing by registered or certified mail of papers or notices prescribed in these rules to the last mailing address of an attorney as shown by the official records in the office of the Executive Director of The Florida Bar shall be sufficient notice and service unless this Court shall direct otherwise.

(3) Definitions. Wherever used in these rules the following words or terms shall have the meaning herein set forth unless the use thereof shall clearly indicate a different meaning:

(a) The accused or accused attorney; a member of The Florida Bar who has been accused of misconduct or whose conduct is under investigation, but as to which conduct there has been no finding of either probable cause or no probable cause.

(b) Bar Counsel: a member of The Florida Bar appointed to represent The Florida Bar in any proceeding under these rules.

(c) The Board, or the Board of Governors: The Board of Governors of The Florida Bar.

(d) Complainant or complaining witness: any person who has complained of the conduct of any member of The Florida Bar to any officer or agency of The Florida Bar.

(e) This Court, or the Court: The Supreme Court of the State of Florida.

(f) Court of this State: a state court authorized and established by the Constitution or laws of the State of Florida.

(g) Executive Committee: The Executive Committee of the Board of Governors of The Florida Bar.

(h) Executive Director: the Executive Director of The Florida Bar.

(i) Probable cause: a finding by an authorized agency that there is cause to believe that a member of The Florida Bar is guilty of misconduct justifying disciplinary action.

(j) Referee: a member of The Florida Bar appointed to conduct proceedings as provided under these rules.

(k) Respondent: a member of The Florida Bar against whom there has been a finding of probable cause.

Rule 11.02: Breaches of Discipline

The following principles, among others expressly adopted by this Court, shall govern the conduct of members of The Florida Bar in their capacity as attorneys and shall govern all proceedings for discipline of such members: A license to practice law confers no vested right to the holder thereof, but is a conditional privilege revokable for cause. The primary purpose of discipline of attorneys is the protection of the public, the legal profession, and the administration of justice, as well as the discipline of members of the Bar. It is the responsibility of this Court to purge the bar of those unworthy to practice law in this state and it is the obligation of The Florida Bar and the individual members thereof to give unlimited cooperation and assistance to this Court in the discharge of this responsibility. The Florida Bar is expressly delegated the authority, power and duty to maintain high ethical standards and to take such proceedings as authorized in these rules to insure such standards in the Bar of Florida.

(1) Oath. Violation of the Oath taken by an attorney to support the Constitutions of the United States and the State of Florida is ground for disciplinary action. Membership in, alliance with, or support of the Communist Party or any organization, group or party advocating or dedicated to the overthrow of the

government by violence or by any means in violation of the Constitution of the United States or Constitution of this state shall be a violation of the Oath.

(2) Code of ethics. Violation of the Rules of Professional Conduct as adopted by Article X of the Integration Rule is a cause for discipline.

(3) Moral conduct.

(a) *Standards.* The standards of professional conduct to be observed by members of the Bar are not limited to the observance of rules and avoidance of prohibitive acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act contrary to honesty, justice or good morals, whether the act is committed in the course of his relations as an attorney or otherwise, whether committed within or outside the State of Florida, and whether or not the act is a felony or misdemeanor, constitutes a cause for discipline.

(b) *Crime.* If the alleged misconduct constitutes a felony or misdemeanor, The Florida Bar may initiate disciplinary action whether or not the accused attorney has been tried, acquitted or convicted in a court for the alleged criminal offense; however, the Board of Governors may, in its discretion, withhold prosecution of disciplinary proceedings pending the outcome of criminal proceedings against an accused attorney if the Board believes that prosecution thereof might tend to prejudice the accused attorney in his defense or the State in the prosecution of the criminal proceedings.

(4) Trust funds and fees. Money or other property entrusted to an attorney for a specific purpose is held in trust and must be applied only to that purpose. Money and other property of clients coming into the hands of an attorney are not subject to counterclaim or setoff for attorneys fees, and a refusal to account for and deliver over such property and money upon demand shall be deemed a conversion. This is not to preclude the retention of money or other property upon which the lawyer has a valid lien for his services or to preclude the payment of agreed fees from the proceeds of transactions or collections. Controversies as to the amount of fees are not grounds for disciplinary proceedings unless the amount demanded is extortionate or the demand is fraudulent.

(5) Solicitation. The solicitation of professional employment by advertisement, runners, solicitors, investigators, or in any other manner shall constitute grounds for disciplinary action. Payment of compensation shall not be a necessary element of proof of solicitation.

(6) Discipline by foreign jurisdiction. A final adjudication by a court or other authorized agency of another state in a disciplinary proceeding that an attorney licensed to practice in that state is guilty of misconduct justifying disciplinary action shall be considered as conclusive proof of such misconduct in a disciplinary proceeding in this state.

Rule 11.03: Disciplinary Agencies

The jurisdiction of the Supreme Court shall be administered in the manner hereinafter stated. The following entities are hereby designated as agencies of the Supreme Court for this purpose and with the following responsibilities, jurisdiction and powers:

(1) The Board of Governors of The Florida Bar. The Board of Governors of The Florida Bar is assigned the responsibility of maintaining high ethical standards among all its members. The Board of Governors of The Florida Bar shall supervise and conduct disciplinary proceedings in accordance with the provisions of these rules.

(a) *Executive Committee.* All acts and discretion required of the Board of Governors under these Rules of Discipline may be exercised by its Executive Committee between meetings of the Board of Governors except the entry of final judgment.

(b) *Executive Director.* All matters to be filed with or served upon the Board of Governors shall be addressed to the Board of Governors and filed with the Executive Director. The Executive Director shall be the custodian of the official records of The Florida Bar.

(2) Grievance committees. There shall be such grievance committees as are herein provided, each of which shall have the authority and jurisdiction required to perform the functions hereinafter assigned to them, and which shall be constituted and appointed as follows:

(a) *Circuit grievance committees.* There shall be not less than one grievance committee in each judicial circuit of this state, and as many more in each judicial circuit as shall be found desirable by the Board of Governors. Such committees shall be

designated as Judicial Circuit Grievance Committees, and in circuits having more than one committee they shall be identified by alphabetical designation in the order of creation such as "First Judicial Circuit Grievance Committee 'A' ", "First Judicial Circuit Grievance Committee 'B' ", and so forth. Such committees shall be continuing bodies notwithstanding changes in membership and they shall have jurisdiction and the power to proceed in all matters properly before them.

(b) *Special grievance committees.* The Board of Governors may from time to time appoint special grievance committees for the purpose of such investigations as may be assigned in accordance with these rules. Such committees shall continue only until the completion of tasks assigned, and they shall have jurisdiction and power to proceed in all matters so assigned to them. All provisions concerning grievance committees shall be applicable to special grievance committees except those concerning terms of office and other restrictions thereon as may be imposed by the Board of Governors. Any vacancies occurring in such a committee shall be filled by the Board of Governors, and such changes in members shall not affect the jurisdiction and power of the committee to proceed in all matters properly before it.

(c) *Membership, appointment.* Each grievance committee shall be appointed by the Board of Governors and shall consist of not less than three members of The Florida Bar.

(d) *Terms.* The terms of the members shall begin on the first day of July and shall end on the next succeeding 30th day of June or until such time as their successors are appointed and qualified.

(e) *Officers.* There shall be a chairman designated by the Board of Governors and a vice-chairman and secretary designated by the chairman on each committee.

(f) *Oath.* Each member of a committee shall subscribe to an Oath to fulfill the duties of his office. Such Oaths shall be filed with the Executive Director and placed with the official records of The Florida Bar.

(g) *Removal.* Any member may be removed from his office by the Board of Governors.

(h) *Quorum, vote.* A majority of a committee but not less than three members shall constitute a quorum. All recommendations of probable cause shall be made by the concurrence of not less than three members.

(3) **Referees.** The Board of Governors shall annually or as often as necessary recommend members of The Florida Bar to

this Court to act as Referees in disciplinary proceedings. This Court will certify annually or as often as necessary a panel of those approved to act as Referees.

(4) Staff counsel. The Board of Governors may employ staff counsel for The Florida Bar to perform such duties under the direction of the Executive Director as may be assigned.

(5) Bar counsel. The Board of Governors from time to time shall designate a panel of members of The Florida Bar to serve as bar counsel to represent The Florida Bar in such disciplinary proceedings as the Board of Governors may direct. Bar counsel shall not be a member of the Board of Governors, a grievance committee or a member of the panel of Referees.

(6) Jurisdiction and powers. The Board of Governors, grievance committees and Referees have such jurisdiction and powers as are necessary to conduct the proper and speedy disposition of any investigation or cause, including the power to compel the attendance of witnesses, to take or cause to be taken the deposition of witnesses and to order the production of books, records or other documentary evidence. Each member of such agencies has power to administer Oaths and affirmations to witnesses in any matter within the jurisdiction of the agency.

(7) Disqualification as trier and attorney for respondent. No member or former member of the Board of Governors and no employee or former employee of The Florida Bar shall represent any party in proceedings provided for in these rules until at least three (3) years from the date of expiration of the term for which he was appointed or elected or subsequent to the date of the termination of his employment; nor shall any member or former member of any grievance committee represent an accused attorney or act as Referee in any such proceeding during the term for which he was appointed and for one year thereafter; nor in any case shall a member or former member of a grievance committee or a Referee represent an accused attorney or act as bar counsel in any proceeding investigated or heard to any extent before him in such offices.

Rule 11.04: Investigation by Grievance Committee

(1) Purpose.

(a) *Investigation.* The purpose and function of a grievance committee is to conduct investigations of alleged misconduct of a member of The Florida Bar justifying disciplinary action and

to determine whether or not to recommend a finding of probable cause by the Board of Governors.

(b) *Non-adversary.* The proceedings of such grievance committees may be informal and shall not assume the character of an adversary proceeding. The committee shall not be bound by the Rules of Evidence.

(c) *No delay for civil or criminal proceedings.* An investigation shall not be deferred or suspended without the approval of the Board of Governors even though the accused is made a party of civil litigation, or is a defendant or is acquitted in a criminal action, notwithstanding that either of such proceedings involves the subject matter of the investigation. The acquittal of an accused in a criminal proceeding shall not necessarily be a bar to disciplinary proceedings nor shall the findings, judgment or decree of any court in civil proceedings necessarily be binding in disciplinary proceedings.

(2) The accused. The accused may be required to testify and to produce evidence as any other witness, and when so required he may be accompanied by counsel. The accused has no right to be present or to be heard during an investigation, but before any finding of probable cause is recommended the accused shall be advised in general terms the nature of the conduct which is being investigated, and he shall be given an opportunity to make a statement, personally or by counsel, verbally or in writing, sworn or unsworn, explaining, refuting or admitting the alleged misconduct. The accused shall have no right to present other testimony or evidence, and he shall have no right of confrontation or cross-examination.

(3) Testimony of witnesses; contempt. The accused attorney or any other person who is subpoenaed to appear and give testimony or to produce books, papers or documents, and who refuses to appear or produce such books, papers or documents before the grievance committee or who, having been duly sworn to testify, refuses to answer any proper question, may be cited for contempt of this Court. Any contempt proceedings instituted or prosecuted during the progress of an investigation or trial covered by the confidential rule shall be conducted in a manner consistent with such rule and shall not be made public except under conditions prescribed in such rule.

(4) Complainant or complaining witness. The complainant or complaining witness is not a party to the disciplinary proceeding and shall have no right to be present during the grievance

committee proceedings except when called to give evidence and when so called may be accompanied by counsel. Neither the complainant nor his counsel shall have the right of confrontation or cross-examination of the accused or any other witness. Neither unwillingness nor neglect of the complaining witness to cooperate, or settlement, compromise, or restitution will excuse the completion of an investigation. The complaining witness shall have no right of appeal.

(5) Record and report of grievance committee.

(a) *No recommendation of probable cause.* If a grievance committee upon termination of its investigation does not recommend a finding of probable cause, the committee shall dispose of its file in the manner directed by the Board of Governors. If the grievance committee has notified the accused of the investigation, then the committee shall notify the accused of the action of the committee. The failure of a grievance committee to recommend probable cause shall not preclude further proceedings.

(b) *Recommendation of probable cause.* If a grievance committee recommends a finding of probable cause, the committee shall prepare a record of its investigation and a report and file the same with the Executive Director, the report being filed in duplicate. The record and report shall be in such form and with such content as shall be prescribed by the Board of Governors. The Executive Director shall furnish a copy of the report to the accused, and a copy of the record shall be made available to the accused at his expense.

(6) Status reports. The status or disposition of all disciplinary matters considered by the grievance committees shall be reported quarterly to the Board of Governors on a report form prescribed by the Executive Director.

Rule 11.05: Review of Grievance Committee Report; Finding of Probable Cause and Assignment for Trial

No formal complaint shall be filed by The Florida Bar in disciplinary proceedings against a member of the Bar unless the Board of Governors shall first find that probable cause exists to believe that the accused is guilty of misconduct justifying disciplinary action or unless the accused has been determined or adjudged to be guilty of the commission of a felony. The finding of probable cause shall be made as hereinafter provided.

(1) Review of grievance committee report. The Board of Governors shall review the record and report filed by the grievance

committee recommending a finding of probable cause and may (1) find probable cause, (2) find no probable cause, or (3) return the record and report to the grievance committee for further proceedings. If the Board of Governors shall find probable cause or no probable cause, the Executive Director shall notify the accused attorney, the grievance committee and may notify the complaining witness.

(2) **Finding of no probable cause.** A finding of no probable cause by the Board of Governors shall be final and after such finding no further proceedings shall be had in the matter by The Florida Bar.

(3) **Finding of probable cause.** The Board of Governors of The Florida Bar, sua sponte or on the basis of the report of any regular or special grievance committee or on the recommendation and report of bar counsel, may by majority vote find probable cause and direct the filing of a formal complaint against an attorney as hereinafter provided. Provided, however, that if such finding is not based upon grievance committee investigation or report of bar counsel in pending proceedings against the accused, then before such finding is made the accused shall be advised in general terms the nature of the conduct which is being considered, and he shall be given an opportunity to make a statement, personally or by counsel, verbally or in writing, sworn or unsworn, explaining, refuting or admitting the alleged misconduct. The accused shall have no right to present other testimony or evidence, and he shall have no right of confrontation or cross-examination.

(4) **Assignment for trial.** The Board of Governors upon making a finding of probable cause shall forthwith appoint a referee to try the cause, the appointment to be from the list approved by the Supreme Court; provided, however, that the Board may defer or withhold prosecution when in the opinion of the Board further proceedings would not be in the interest of the public or The Florida Bar.

Rule 11.06: Trial by Referee and Entry of Judgment

When a finding has been made by the Board of Governors that there is cause to believe that a member of The Florida Bar is guilty of misconduct justifying disciplinary action, and such finding of probable cause has been assigned for trial before a referee, the proceeding thereafter shall be an adversary proceeding in which the accused is the respondent and which shall be conducted as follows:

(1) Venue. The trial shall be held in the county in which an alleged offense occurred, or in the county where the respondent resides or practices law or last practiced law in Florida, whichever shall be designated by the Board of Governors; provided, however, that if the respondent is not a resident of Florida and the alleged offense is not committed in Florida, the trial shall be held in a county designated by the Board of Governors; and provided further that the trial may be held in any county by agreement of the parties.

(2) Style of proceedings. All proceedings instituted by The Florida Bar shall be styled "The Florida Bar, complainant v. (name of respondent), respondent."

(3) Nature of proceedings.

(a) *Administrative in character.* A disciplinary proceeding is neither civil nor criminal but is a quasi-judicial administrative proceeding.

(b) *Discovery.* Discovery shall be available to the parties in accordance with the Florida Rules of Civil Procedure.

(4) Bar counsel.

(a) *Appointment.* Upon assignment of a cause for trial the Board of Governors shall appoint bar counsel to prosecute the cause in the name of The Florida Bar.

(b) *Duties.* Bar counsel shall make such investigation as in his opinion is necessary and shall prepare and prosecute with utmost diligence any case assigned to him.

(5) Pleadings. Pleadings may be informal and shall comply with the following requirements:

(a) *Complaint; consolidation and severance.*

(i) *Filing.* The complaint against the respondent shall be filed by bar counsel within thirty (30) days after his appointment, or as soon thereafter as practical.

(ii) *Content.* The complaint shall set forth the particular act or acts of conduct for which the attorney is sought to be disciplined.

(iii) *Joinder of charges and respondents; severance.* A complaint may embrace any number of charges against one or more respondents, and charges may be against any one or any number of respondents, all as the Board of Governors may direct; but a severance may be granted by the referee when the ends of justice require it.

(b) *Answer and motion.* Respondent may answer the complaint, and as a part thereof or by separate motion may challenge only the sufficiency of the complaint and the jurisdiction of the forum. All other defenses shall be incorporated in respondent's answer. All pleadings of the respondent must be filed within twenty (20) days of service of a copy of the complaint upon him.

(c) *Reply.* If respondent's answer shall contain any new matter or affirmative defense, a reply thereto may be filed within ten (10) days of the date of service of a copy upon bar counsel, but failure to file such a reply shall not prejudice The Florida Bar. All affirmative allegations in the respondent's answer shall be considered as denied by The Florida Bar.

(d) *Disposition of motions.* Hearings upon motions may be deferred until the final hearing; and whenever heard, rulings thereon may be reserved until termination of the final hearing.

(e) *Filing of pleadings.*

(i) *Complaint and answer.* The complaint and answer or other appropriate pleading shall be filed in quadruplicate with the Executive Director. If there is more than one attorney charged in the complaint, one additional copy of all pleadings shall be filed for each respondent in excess of one.

(A) *Service.* Service of the complaint and answer or other appropriate pleading filed by the respondent replying to the complaint shall be served upon the proper person by the Executive Director as elsewhere provided in these rules.

(B) *To referee.* The Executive Director shall transmit such original pleadings to the referee before trial or at such other time as may be directed by the referee.

(ii) *Subsequent pleadings.* With reference to all subsequent pleadings and motions, the original shall be filed with the referee and a copy thereof sent to the Executive Director and to each respondent in the proceeding.

(f) *Amendment.* Pleadings may be amended by order of the referee, and a reasonable time shall be given within which to respond thereto.

(6) Notice of final hearing. The cause may be set down for trial by either party or the referee upon not less than ten (10) days notice. The trial shall be held as soon as possible following the expiration of ten (10) days from the filing of respondent's answer, or if no answer is filed, then from the date when such answer is due.

(7) The respondent. The respondent may be called as a witness by The Florida Bar to make specific and complete disclosure of all matters material to the issues. When the respondent attorney is subpoenaed to appear and give testimony or to produce books, papers or documents, and he refuses to appear or to produce such books, papers or documents, or, having been duly sworn to testify, he refuses to answer any proper question, he may be cited for contempt of this Court.

(8) Complaining witness. The complaining witness shall have no rights other than those of any other witness; he has no right to be present during a hearing or trial but he may be called upon to testify and produce evidence as any other witness. Neither unwillingness nor neglect of the complaining witness to cooperate, nor settlement, compromise or restitution will excuse failure to complete any trial.

(9) Findings and judgment.

(a) *Record and report of referee.* Within thirty (30) days after the conclusion of a trial before a referee, or as soon thereafter as practical, he shall make a report and enter it as part of the record. The referee's report shall include (1) a finding of fact as to each item of misconduct of which the respondent is charged, (2) recommendations as to whether or not the respondent should be found guilty of misconduct justifying disciplinary measures, (3) recommendations as to the disciplinary measures to be applied, (4) a statement of the costs of the proceedings and recommendations as to the manner in which costs should be taxed. The costs shall include court reporters' fees, witness fees and traveling expenses, and reasonable traveling and out of pocket expenses of the referee and bar counsel, if any. Within five (5) days after the entry of findings of the referee, the record of the proceeding shall be filed with the Executive Director. Within five (5) days after such filing, a notice thereof together with a copy of the report of the referee shall be served upon bar counsel and upon the respondent by the Executive Director.

(b) *Statement of parties.* Bar counsel and respondent may each file a statement in support of or in opposition to the findings and recommendations of the referee. Such statement, if filed, shall be filed with the Executive Director within ten (10) days after service of a copy of the report of the referee or within five (5) days after receipt of such statement from an opposing party, and shall become a part of the record.

(c) *Review and entry of judgment.*

(i) *Review.* The entire record, which shall consist of the complaint and all other pleadings, transcript of testimony, exhibits, report of the referee and statement of the respondent in opposition thereto, if any, shall be referred to and read by a reviewing committee consisting of five members of the Board of Governors designated by the President. Such committee shall prepare a written report indicating the concurring and dissenting members of the committee as to the guilt of the respondent and as to its recommendations for disciplinary measures, if any. The report of the reviewing committee shall be considered by the Board; provided, however, that in the event less than four members of the committee concur as to the guilt of the respondent, or in the event the Board shall fail to approve the report of the committee as to the guilt of the respondent, then a quorum of the Board shall review the entire record in such manner as to insure protection of the rights of the accused.

(ii) *Judgment.* The Board of Governors shall enter an appropriate judgment in accordance with its findings which shall be signed by the President and a copy of which shall be furnished to the respondent. If the respondent is found not guilty, the judgment shall dismiss the complaint. If the respondent is found guilty, the judgment shall set forth the disciplinary measures to be enforced. The costs shall be taxed in the discretion of the Board of Governors.

(iii) *Filing.* If the respondent is found guilty and the judgment includes public reprimand, suspension from practice or disbarment, the Executive Director shall file the entire record with the Clerk of the Supreme Court.

(10) The record.

(a) *Reporting of testimony.* All hearings at which testimony is presented shall be reported and the transcript of the testimony shall be filed in the cause.

(b) *Contents.* The record shall include all items properly filed in the cause including pleadings, transcript of testimony, exhibits in evidence, findings and report of the referee, statements of the parties, and the judgment.

(11) Plea of guilty by accused or respondent. At any time during the progress of disciplinary proceedings an accused attorney or respondent may tender a plea of guilty.

(a) *Before filing of complaint.* If the plea is tendered before filing of a complaint by bar counsel such plea shall be tendered in writing to the Board of Governors. The Board may direct such further investigation as is warranted and formulate charges and serve such charges upon the accused so that he may enter his plea of guilty thereto in writing by filing the same with the Executive Director within ten (10) days thereafter. The Board of Governors shall enter an appropriate disciplinary judgment.

(b) *After filing of complaint.* If the complaint has been filed against the respondent by bar counsel he may enter a plea of guilty thereto by filing the same in writing with the referee to whom the cause has been assigned for trial and such referee shall take such testimony in relation thereto as he may be advised. The referee will file his report and the Board of Governors, upon review of the report and record received from the referee, will enter appropriate disciplinary judgment.

(c) *Unconditional.* A plea of guilty shall be unconditional in terms, but such shall not preclude appellate review as to disciplinary measures imposed.

(d) *Procedure.* Except as herein provided all procedure in relation to disposition of the cause on plea of guilty shall be as elsewhere provided in these rules.

(12) Appellate review. The respondent may appeal from a judgment of the Board of Governors. Such appeal shall be made in the manner provided by the rule on appellate review.

Rule 11.07: Disciplinary Measures

The judgments entered finding members of The Florida Bar guilty of misconduct shall include one or more of the following disciplinary measures:

(1) Private reprimand. A private reprimand shall be administered so as to not violate the rule concerning the confidential nature of disciplinary proceedings, and otherwise in the manner prescribed in the judgment. Due notice shall be given to the respondent of any hearing to administer the reprimand. The respondent shall appear personally, if required, and a memorandum of the hearing shall be made a part of the record of the proceeding.

(2) Probation. The respondent may be placed upon probation for a stated period of time of not less than six months nor more than three years. The judgment shall state the conditions of the probation which may include the following: Supervision of

all or part of the respondent's work by a member of The Florida Bar; the making of reports to a designated agency; the satisfactory completion of a course of study or a paper on legal ethics approved by the Supreme Court. Failure to observe the conditions of the probation, or a finding of probable cause as to conduct of the respondent committed during the period of probation, shall terminate the probation. In such event, even though such finding of probable cause shall be made after the expiration of the period of probation, the judgment shall be reconsidered and an appropriate judgment shall be entered.

(3) Public reprimand. A public reprimand shall be administered in the manner prescribed in the judgment. Due notice shall be given to the respondent of any hearing set down to administer the reprimand. The respondent shall appear personally if required, and a memorandum of the hearing shall be made a part of the record of the proceeding.

(4) Suspension. The respondent may be suspended from the practice of law for an appropriate time or for a definite period of time and an indefinite period thereafter to be determined by the conditions imposed by the judgment. During such suspension the respondent shall continue to be a member of The Florida Bar but without the privilege of practicing; and upon the expiration of the suspension period and the satisfaction of all conditions accompanying the suspension, the respondent shall become eligible to all of the privileges of membership in The Florida Bar.

(5) Disbarment. A judgment of disbarment without further qualification shall be construed to be disbarment for an indefinite period of time; but the judgment may be stated to be disbarment for an indefinite period of time, or for a definite period of time and an indefinite period thereafter to be determined by the conditions imposed in the judgment. No period of disbarment shall be for less than six months. During disbarment the respondent shall not be a member of The Florida Bar. During any indefinite period of disbarment he may apply for reinstatement in the manner provided by the rule on reinstatement.

Rule 11.08: Discipline upon Conviction

(1) Determination or judgment of guilt. Determination or judgment of guilt of a member of The Florida Bar by a court of competent jurisdiction upon trial or plea of any crime or offense that is a felony under the laws of this state, or under the laws under which any other court making such determination or en-

tering such judgment exercises its jurisdiction, shall be conclusive proof of the guilt of the offense charged for the purposes of these rules. Upon such determination or entry of such judgment of guilt by any court of this state, the judge or the clerk thereof shall transmit a certified copy of such determination or judgment to the Clerk of this Court and to the Executive Director of The Florida Bar.

(2) Suspension by judgment (Florida). If such a judgment of guilt is entered by a court of the State of Florida, the convicted attorney shall stand suspended as a member of The Florida Bar on the 11th day following the entry of the judgment unless he shall before that day file a petition with the Supreme Court to modify or terminate such suspension as elsewhere provided. If such a petition is filed on or before the 10th day following the entry of the judgment, the suspension will be thereby deferred until entry of an order upon the petition.

(a) *Petition to modify or terminate suspension.* At any time after the entry of a judgment of guilt, the convicted attorney may file a petition with the Supreme Court to modify or terminate such suspension and shall serve a copy thereof upon the Executive Director. An opportunity to respond to the petition and appear at any hearing on the petition shall be afforded to The Florida Bar. If such petition is filed after the tenth day following the entry of judgment of guilt, the suspension shall remain in effect pending disposition of the petition. Modification or termination of suspension shall be granted only upon a showing of good cause.

(b) *Continuation of suspension until final disposition.* If an appeal is taken by the convicted attorney from the judgment of the trial court in the criminal proceeding, and on review the cause is remanded for further proceedings, the suspension shall remain in effect until the final disposition of the criminal cause unless modified or terminated by the Supreme Court as elsewhere provided.

(c) *Termination of suspension.* Such suspension shall continue until final disposition of the criminal cause unless sooner terminated by order of the Supreme Court as elsewhere provided. A final disposition of the criminal cause resulting in acquittal will terminate the suspension. A final termination of the criminal cause resulting in a determination or judgment of guilt shall continue the suspension until expiration of all periods for appeal and rehearing, and until after termination of disciplinary proceedings by The Florida Bar as elsewhere provided.

(3) Suspension by Supreme Court. If any such determination or judgment of guilt is entered by any court other than a court of the State of Florida, The Florida Bar may petition this Court for an order suspending the convicted attorney from the practice of law. Service of a copy of such petition shall be effected by the Clerk of this Court upon the convicted attorney who may within ten days, or such further time as this Court may allow, file a response thereto and serve a copy thereof upon the Executive Director. This Court shall direct such further proceedings as may be appropriate.

(4) Disciplinary judgment after conviction. If a determination or judgment of guilt of a felony is entered against a member of The Florida Bar and becomes final without appeal or by affirmance on appeal, such judgment shall be conclusive proof of the guilt of the offense charged. The Executive Director shall serve upon the attorney named in such determination or judgment a notice to show cause, if any there be, why appropriate disciplinary judgment should not be entered by the Board of Governors. The respondent attorney may, within fifteen days, file his return with the Executive Director. The Board of Governors shall consider such return and take appropriate action and thereafter enter such disciplinary judgment as may be warranted.

(5) Appellate review. The respondent attorney may appeal from a judgment of the Board of Governors in the manner provided by the rule on appellate review.

Rule 11.09: Resignation Pending Disciplinary Proceedings

An attorney may resign from The Florida Bar during the progress of disciplinary proceedings against him in the following manner.

(1) Definition. If a disciplinary agency is investigating the conduct of an attorney, or if such an agency has recommended probable cause, then disciplinary proceedings shall be deemed to be pending and the resignation shall be made pursuant to this rule.

(2) Petition for leave to resign. The petition for leave to resign shall be filed with the Executive Director of The Florida Bar and shall contain a statement of all past and pending disciplinary actions and criminal proceedings against the petitioner. Such statement shall describe the charges made or under investigation for professional misconduct, results of past proceedings

and the status of pending investigations and proceedings. Any petition deemed by the Board of Governors to be incomplete or insufficient may in the discretion of the Board be returned for such amendment as may be required.

(3) Judgment. The Board of Governors shall consider the petition for leave to resign and the charges against the accused. If it has been shown by the petitioner in a proper and competent manner that the public interest will not be adversely affected by the granting of the petition, and that such will not adversely affect the purity of the courts nor hinder the administration of justice or the confidence of the public in the legal profession, the Board of Governors shall enter an appropriate judgment granting leave to resign; otherwise, the petition shall be denied. If the judgment grants to the petitioner leave to resign, the judgment may require that the resignation be subject to appropriate conditions. A copy of the judgment shall be furnished to the petitioner; and if the judgment grants leave to resign a certified copy thereof, together with the supporting record, shall be filed with the clerk of the Supreme Court. A judgment granting leave to resign shall become final and effective when approved by order of the Supreme Court.

(4) Appellate review. The petitioner may appeal from the judgment in the manner provided by the rule on appellate review.

(5) Delay of disciplinary proceedings. The filing of a petition for leave to resign pending disciplinary proceedings shall not stay the progress of the disciplinary proceedings without the approval of the Board of Governors.

Rule 11.10: Reinstatement

An attorney who has been disbarred other than by permanent disbarment, or whose resignation pending disciplinary proceedings has been accepted under conditions which allow reinstatement, may be reinstated to membership in The Florida Bar pursuant to this rule. The proceedings under this rule are not applicable to suspension for non-payment of dues.

(1) Petition: form, contents, fingerprints.

(a) *Filing.* The original petition for reinstatement and three copies thereof shall be in writing, verified by the petitioner, addressed to the Board of Governors and filed with the Executive Director at the office of The Florida Bar in Tallahassee. With the filing of his petition the petitioner shall furnish two sets of

his fingerprints on record cards furnished by The Florida Bar for this purpose. One copy of the petition shall be promptly filed by the Executive Director with the Clerk of this Court.

(b) *Form and exhibits.* The petition shall be in such form and shall be accompanied by such exhibits as the Board of Governors shall prescribe. The information required concerning the petitioner may include, in the discretion of the Board of Governors, any or all of the following matters in addition to such other matters as may be reasonably required to determine the fitness of the petitioner to resume the practice of law: criminal and civil judgments; disciplinary judgments; copies of income tax returns together with consents to secure original returns; occupation during disbarment and information in connection therewith; financial statements; statement of restitution of funds which were the subject matter of disciplinary proceedings.

(2) Deposit for costs. The petition shall be accompanied by a deposit in such amount as the Board of Governors shall prescribe to insure payment of reasonable costs of the proceeding. Such costs in the discretion of the Board of Governors may include court reporters' fees, witness fees and traveling expense, and reasonable traveling expense and out of pocket costs of the referee or investigative committee and attorneys for The Florida Bar.

(3) Reference of petition for hearing. The Board of Governors shall refer the petition for reinstatement for investigation. Such investigation may be by means of formal hearing and findings or otherwise. Such reference shall be in the discretion of the Board of Governors to a referee, a grievance committee of the county where the petitioner resides, or formerly resided, or to a reinstatement committee to be appointed by the Board of Governors. Provided, however, that no such reference shall be made until evidence is submitted showing that all costs assessed against the petitioner in all disciplinary proceedings have been paid.

(4) Attorneys for the Bar. When a petition for reinstatement is filed, the Board of Governors may appoint, or may request any local Bar association to appoint, from the active members of The Florida Bar, one or more attorneys to represent The Florida Bar in the proceeding. The duties of such attorneys shall be to appear at the hearings and to prepare and present to said committee or referee evidence which, in the opinion of the committee or referee or such attorneys, should be considered in passing upon the petition.

(5) Procedure. The referee or committee to which the petition for reinstatement is referred shall conduct the investigation as a trial in the same manner, to the extent practical, as proceedings are conducted under the rule concerning trials. The matter to be investigated and decided shall be the fitness of the petitioner to resume the practice of law.

(6) Hearing, notice, evidence.

(a) *Notice.* The committee or referee to whom the petition for reinstatement is referred shall fix a time and place for hearing, and notice thereof shall be given at least ten days prior to the hearing to the petitioner, to attorneys representing The Florida Bar, and to such other persons as may be designated by any member of the committee or the referee to which the petition is referred.

(b) *Appearances.* Any of said persons to whom notice is given, any other interested person, or any local bar association, may appear before said committee in support of or in opposition to the petition at any time or times fixed for hearings thereon.

(c) *Failure of petitioner to be examined.* For the failure of the petitioner to submit to examination as a witness, pursuant to notice given, the Board of Governors shall dismiss the petition for reinstatement unless good cause is shown for such failure.

(7) Prompt hearing; report. The committee or referee to which a petition for reinstatement has been referred by the Board of Governors shall proceed to a prompt hearing, at the conclusion of which it shall make and transmit to the Board of Governors a report which shall include the findings of fact and a recommendation as to whether or not the petitioner is qualified to resume the practice of law. Such report shall be in the form prescribed by the Board of Governors.

(8) Notice of reinstatement committee's or referee's report. When the report of the committee or referee is received at the office of the Executive Director in Tallahassee, a copy thereof shall be sent by the Executive Director to the petitioner and to the member of The Florida Bar representing the Bar and to each local bar association appearing in the proceeding. A copy of the letter of transmittal, bearing the date of mailing and the name of the person mailing the same, shall be retained in the office of The Florida Bar and shall be prima facie evidence of the mailing thereof upon said date.

(9) Statement in opposition or support. At any time within ten days after mailing of the notice of report the petitioner or

the member of The Florida Bar representing the Bar or any local bar association may file in the office of The Florida Bar in Tallahassee an original and three copies of a typewritten statement in support of or in opposition to the report.

(10) Judgment by Board of Governors. After filing of said report, the Board of Governors shall review the petition, the findings and recommendations of the committee or referee and the record before such committee or referee and shall enter an appropriate judgment. If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate him in The Florida Bar; provided however, that the judgment may make such reinstatement conditional upon the payment of all or part of the costs of the proceeding, and upon the making of partial or complete restitution to parties harmed by the petitioner's misconduct which led to the termination of his membership in The Florida Bar; and further provided, however, that if the petitioner has been removed from membership in The Florida Bar for more than ten (10) years, the reinstatement may be conditioned upon the furnishing of such proof of competency as may be required by the judgment in the discretion of the Board of Governors, which proof may include certification by the Florida Board of Bar Examiners of the successful completion of all examinations for admission to The Florida Bar subsequent to the entry of the judgment. A copy of the judgment shall be forthwith served upon the petitioner.

(11) Appellate review. The petitioner may appeal from the judgment in the manner provided by the rule on appellate review.

(12) Successive petitions. No petition for reinstatement shall be filed within two years following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

Rule 11.11: Appellate Review

All judgments entered in proceedings under these Rules of Discipline shall be subject to appeal by petition to the Supreme Court in the following manner:

(1) Appellant. Any party to a proceeding other than The Florida Bar may appeal from an order or judgment entered under these rules; provided, however, the respondent and The Florida Bar may appeal from an order entered in contempt proceedings.

(2) Appointment of bar counsel. Within 30 days after a copy of a petition for review is filed with the Executive Director, the Board of Governors shall appoint bar counsel to represent The Florida Bar in the appeal.

(3) Procedure. Appeals shall be only in accordance with the following procedure.

(a) *Petition for review.* The appeal shall be commenced by filing a petition for review with the Supreme Court and two copies thereof with the Executive Director within 30 days after entry of judgment or order to be reviewed. If the appeal is from a circuit court, then within such 30 days another copy of the petition shall be filed with the clerk of such court. If the State of Florida is the appellee, then within such 30 days another copy of the petition shall be served upon the state attorney. The filing of the petition and copies is jurisdictional, and failure to file the petition and such copies within such 30-day period shall preclude an appeal.

(b) *Record on appeal.* If the appeal is from a judgment of the Board of Governors, the Executive Director shall forward the entire record to the Supreme Court within ten days after the filing with the Executive Director of a copy of the petition for review. If the appeal is from a circuit court, the clerk of the court shall forward the entire record to the Supreme Court within ten days after the filing with such clerk of a copy of the petition for review, or within ten days after the filing of the transcript of testimony, whichever shall last occur.

(c) *Briefs.* The petitioner shall file a brief within 30 days after the filing of the record with the Supreme Court; and if not filed the appeal shall be dismissed. A reply brief may be filed within 20 days after service of a copy of petitioner's brief.

(d) *Oral argument.* Oral argument shall be allowed in all appeals and upon expiration of the time for filing the reply brief the Clerk shall assign the cause for oral argument.

(e) *Burden upon appellant.* Upon review the burden shall be upon the appellant to show wherein the judgment from which the appeal is taken is erroneous, unlawful or unjustified.

(f) *Judgment of Supreme Court.* After review the Supreme Court shall enter an appropriate order or judgment. If no appeal is taken from a judgment or order entered under these rules, and if a certified copy thereof has been filed with the Court, the Court shall enter a judgment thereon.

(4) Precedence of proceedings. Appeals in disciplinary proceedings shall take precedence over all other civil causes in the Supreme Court.

(5) Extraordinary writs. All applications for extraordinary writs which are concerned with disciplinary proceedings under these rules of discipline shall be made to the Supreme Court.

(6) Florida Appellate Rules. To the extent necessary to implement this rule and if not inconsistent herewith, the Florida Appellate Rules shall be applicable to appeals in disciplinary proceedings.

Rule 11.12: Confidential Nature of Proceedings

All matters, including files, preliminary investigation reports, inter-office memoranda, records of investigations and the records in trials and other proceedings under these Rules, excepting only those matters in connection with proceedings initiated in circuit courts, are all property of The Florida Bar. All of such matters having to do with (1) investigation and other proceedings to determine probable cause, (2) trials upon a finding of probable cause, and (3) resignations pending disciplinary proceedings, shall be confidential to all parties participating therein or having knowledge thereof except as otherwise provided in these rules. All of such persons shall be admonished by the agency before whom they appear to observe the confidential nature of such proceedings. Provided, however, that the confidential nature of such proceedings is subject to the following exceptions:

(1) Public record. Those parts of proceedings prior to trial which are required to be served upon an accused, and the record of the proceeding as elsewhere defined, shall become public information in the following instances:

(a) *Request of accused or respondent.* If the accused or respondent shall file in the proceeding a request in writing that the proceedings be made public information.

(b) *Circuit court.* If the proceeding is in a circuit court; but proceedings in contempt of confidential proceeding shall preserve the confidentiality of the disciplinary proceeding as elsewhere provided.

(c) *Judgment of suspension or disbarment.* Upon entry of a judgment of suspension from practice or disbarment.

(d) *Appellate review.* Upon the filing of an appeal in the manner provided by the rule on appellate review.

(2) Resignation pending disciplinary proceedings. If an accused or respondent shall resign pending disciplinary proceedings which are confidential, such proceedings shall remain confidential except as follows: If the resigned member of The Florida Bar shall apply for readmission to The Florida Bar or for admission to the bar of any other jurisdiction, the Florida Board of Bar Examiners and the comparable body having jurisdiction of an application for admission in the other jurisdiction shall be given access to the files of The Florida Bar for the purpose of evaluating the applicant's competency to practice law.

(3) Evidence of crime. The confidential nature of disciplinary proceedings and the oath given to witnesses therein shall not proscribe the filing of informations and the giving of testimony before grand juries by individuals having knowledge of facts indicating the commission of crime if such knowledge was obtained independently of disciplinary proceedings.

(4) Information concerning status of proceeding. No information concerning the pendency or status of an investigation or trial or other confidential matter shall be given unless and until a judgment of the Board of Governors is filed with the Clerk of this Court or unless authorized by the Board of Governors; provided, however, that the chairman of a grievance committee may advise a circuit judge in confidence of the status of proceedings as to a particular accused or respondent.

Rule 11.13: Additional Rules of Procedure

(1) Time is directory. Except as otherwise provided in these Rules of Discipline, the time intervals required are directory only and are not jurisdictional. Failure to observe such directory intervals may result in contempt of the agency having jurisdiction or of the Supreme Court, but will not prejudice the offending party except where so provided.

(2) Notice in lieu of process. Every member of The Florida Bar is within the jurisdiction of the Supreme Court and its agencies under these rules, and service of process is not required to obtain jurisdiction over respondents in disciplinary proceedings; but due process requires the giving of reasonable notice, and such shall be effective by the service of the complaint upon the respondent by mailing a copy thereof by registered or certified mail return receipt requested to the last known address of the respondent according to the records of The Florida Bar or such later address as may be known to the person effecting the service.

(3) Subpoenas. Subpoenas for the attendance of witnesses and the production of documentary evidence other than before a circuit court shall be issued as follows:

(a) *Referees.* Subpoenas for the attendance of witnesses and production of documentary evidence before a referee shall be issued by the referee and shall be served in the manner provided by law for the service of process.

(b) *Grievance Committees.* Subpoenas for the attendance of witnesses and the production of documentary evidence before a grievance committee may be issued by any member of a grievance committee in pursuance of an investigation authorized by the committee. Such subpoenas may be served by any member of such committee or in the manner provided by law for the service of process.

(c) *Reinstatement Committees.* Subpoenas for the attendance of witnesses and the production of documentary evidence before a reinstatement committee shall be issued by the chairman, vice-chairman or secretary of such committee, and shall be served in the manner provided by law for the service of process.

(d) *Board of Governors.* Subpoenas for the attendance of witnesses and the production of documentary evidence before the Board of Governors shall be issued by the Executive Director under the seal of The Florida Bar, and shall be served in the manner provided by law for the service of process.

(e) *Confidential Proceedings.* If the proceeding is confidential a subpoena shall not name the accused or respondent but shall style the proceeding as "Confidential proceeding by The Florida Bar under the Rules of Discipline."

(f) *Contempt.* Any person who without adequate excuse fails to obey such a subpoena served upon him may be cited for contempt of this court in the manner provided by this rule.

(4) Oath of witnesses. Every witness in every proceeding under these rules shall be sworn to tell the truth and not to disclose the existence of the proceeding nor the identity of the accused or respondent until the proceeding is no longer confidential under these rules. Violation of the oath shall be an act of contempt of this Court.

(5) Contempt. If an agency other than a circuit court shall find that a person is in contempt under these rules, such person shall be cited for contempt in the following manner:

(a) *Petition for rule to show cause.* The agency shall direct bar counsel, or chairman of the agency if there is no bar counsel

serving in the matter in which the contempt occurs, to present to the circuit court having jurisdiction a petition for the issuance of a rule to show cause why the person so accused should not be held in contempt of this Court.

(b) *Confidentiality.* If the proceeding in which the contempt occurs is a confidential proceeding, the confidentiality shall be preserved in the contempt proceeding in the following manner: Pleadings shall be styled "Proceeding by The Florida Bar under the Rules of Discipline, The Florida Bar v. (name of accused in contempt proceeding)." No pleadings or matters shall be filed with the clerk of the circuit court; instead all such matters shall be presented to the circuit judge hearing the same and shall be returned to the agency upon completion of the contempt proceedings and then filed with the Executive Director. Docket entries and sentences or judgments in contempt proceedings, if entered in the office of the clerk of the circuit court, shall be styled as provided for pleadings and shall make no references to the accused or the respondent in the disciplinary proceeding in which the contempt occurred. If the name of the accused or respondent shall become of public record, the court having jurisdiction in the contempt proceeding shall take appropriate steps to preserve the confidentiality of the disciplinary proceedings, and shall consider whether or not the person responsible for the making of the name of the accused or respondent of public record is also guilty of contempt under these Rules of Discipline.

(c) *Appellate review.* A judgment in such contempt proceedings may be appealed by either party in the manner provided in the rule on appellate review, except that a copy of the petition for appeal shall not be filed with the clerk of the circuit court, and the record shall be forwarded by the judge or the agency possessing the same.

Rule 11.14: Disciplinary Proceedings in Circuit Courts

(1) Disciplinary matters in district courts of appeal and circuit court. Whenever it shall be made known to any of the judges of the district courts of appeal or any judge of a circuit court in this state that a member of The Florida Bar practicing in any of the courts of his district or judicial circuit has been guilty of any unprofessional act as defined by this Integration Rule or the code of ethics adopted by this Court, such judge may direct the state attorney for the circuit in which such attorney shall have his office to make in writing a motion in the name of the State of Florida to discipline such attorney setting forth in the motion the

particular act or acts of conduct for which the attorney is sought to be disciplined.

(2) **Copy served upon accused.** Upon the filing of such motion a copy thereof shall be served upon the accused attorney and he shall, within ten (10) days after the service thereof, file his answer thereto. A copy of such motion shall be filed with the Executive Director of The Florida Bar at the time of service upon the accused attorney.

(3) **Trial before a circuit judge.** Upon the filing of the answer the presiding judge of the judicial circuit in which the accused attorney's office is located shall designate one of the judges thereof to try and determine said cause. Such judge shall conduct a hearing thereon and shall hear the evidence to be offered by the State of Florida and the accused. A representative or representatives of The Florida Bar, appointed by the Board of Governors of The Florida Bar, shall have the right to be present and to observe the proceedings. Upon the conclusion of said hearing, said judge shall enter such judgment of dismissal, reprimand, probation, suspension or disbarment as shall be appropriate to the circumstances.

The parties shall be entitled to compulsory process to force the attendance of any witnesses.

(4) **Judgment filed in Supreme Court.** If the judgment be one of public reprimand, suspension or disbarment, three certified copies of the same shall be forthwith filed by the clerk of the trial court with the Clerk of the Supreme Court of Florida. The Clerk of the Supreme Court shall retain one copy for his records, deliver to the Executive Director of The Florida Bar one copy of said judgment for his official records, and shall forthwith serve the third copy upon the accused attorney.

(5) **Petition for appellate review.** The respondent may appeal from a judgment entered by a circuit court. Such appeal shall be made in the manner provided by the rule on appellate review.

(6) **Duty to expedite proceedings.** It shall be the duty of the state attorney who is directed to file said motion to file the same promptly and to dispose of said controversy expeditiously.

(7) **Concurrent jurisdiction of The Florida Bar.** The jurisdiction of the district courts of appeal and circuit courts created by this rule and the procedure herein outlined shall be concurrent with that of The Florida Bar under the preceding portions of

these Rules of Discipline. The forum first asserting jurisdiction in a disciplinary matter shall retain the same to the exclusion of the other until the final determination of the cause.

(8) **Reinstatement.** Reinstatement of attorneys disbarred by proceedings in circuit courts shall be governed by the rule on reinstatement.

Rule 11.15: Statutes superseded

These Rules of Discipline shall supersede Sections 454.24, 454.25, 454.26, 454.27, 454.28, 454.29 and such parts of Sections 454.18, 454.30, 454.31 and 454.32, Florida Statutes 1959, as are in conflict herewith.

It is, therefore, ordered that the amendment set forth above shall take effect at 12:01 a. m. January 1, 1962, and shall govern all disciplinary procedures instituted on and after that date.

ROBERTS, C. J., TERRELL, THOMAS, HOBSON, DREW, THORNAL and O'CONNELL, JJ., concur.

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Supreme Court, U.S.
FILED
OCT 9 1967
JOHN F. DAVIS, CLERK

No. 592

IN THE

United States Supreme Court

CARL G. SWANSON, *Petitioner*

v.

THE FLORIDA BAR, *et al, Respondents*

On Petition for Certiorari to the United States
Court of Appeals
Fifth Circuit

BRIEF FOR RESPONDENTS

WILLIAM H. ADAMS III
P. O. Box 4099
Jacksonville, Florida 32201
Attorney for Respondents

October 6, 1967

IN THE

United States Supreme Court

CARL G. SWANSON, *Petitioner*

v.

THE FLORIDA BAR, *et al, Respondents*

BRIEF IN OPPOSITION FOR RESPONDENTS

QUESTION PRESENTED

Did the district court below err in dismissing an attorney's complaint for an injunction preventing The Florida Bar (an official body created by order of the Supreme Court of Florida) from conducting disciplinary proceedings against him for alleged misconduct when the proceedings sought to be enjoined were actually pending and where sustaining the complaint would have required the court to hold invalid on its face the rules of the Supreme Court of Florida for conducting disciplinary proceedings against attorneys?

STATEMENT OF THE CASE

The statement of the case in the petition completely fails to describe the proceedings which culminated in the opinion and judgment of the Court of Appeals.

On December 23, 1964, petitioner, a Florida attorney, filed a motion in the Supreme Court of Florida (R. 44) alleging that a grievance committee of The Florida Bar was about to conduct an investigation of charges that he had paid for the solicitation of professional employment and that he had procured false testimony in Florida court proceedings (R. 48). The motion sought to have the investigation quashed on the ground (among others) that proceedings under the Integration Rule of the Supreme Court of Florida which established The Florida Bar[1] would deprive petitioner his right to practice without due process of law by combining in The Florida Bar "as an agency of the Supreme Court of Florida the functions of prosecutor, judge and jury" (R. 46). The other grounds of the motion raised questions of state law which are not material here.

Petitioner's motion was heard by the Supreme Court of Florida. In responding to the motion, The Bar contended that the Integration Rule was not invalid on its face and that whether proceedings against Petitioner would deny him due process of law could only be determined from the conduct of the proceedings themselves; therefore, the motion was untimely. The Supreme Court of Florida denied the motion as premature.

Petitioner then filed a complaint (R. 1) in the district court below seeking an injunction which would prevent The Florida Bar from continuing to prosecute the griev-

[1]The Florida Bar is a corporate body created by and existing under the authority of the Supreme Court of Florida. All attorneys in Florida are required to be members. The Bar has been charged by the Florida Supreme Court with the maintenance of professional standards in the practice of law. To that end it has been vested as an official arm of the court with the powers and authority described in the Integration Rule of The Florida Bar. See the appendix to petitioner's brief which sets forth the Preamble to the Integration Rule, Sections 1 and 2 of Article II, and all of Article XI of the Integration Rule.

ances against him. The only specific allegation in the complaint (apart from Petitioner's conclusory allegation that the Integration Rule is void on its face) is that one of the members of the grievance committee which had investigated the charges and developed facts prior to the finding by the Board of Governors of probable cause had previously filed charges against the Petitioner.

The Bar filed a motion to dismiss (R. 22) asking the district court to abstain from exercising such jurisdiction as it may have had because the Florida proceedings were actually pending, because Petitioner could raise the constitutional issues just as well in those proceedings, and because if the ultimate decision by the Supreme Court of Florida should be against him, he would be entitled to have the constitutional issues determined through appropriate proceedings in this court. The constitutional question could then be decided in the context of what was actually done by The Florida Bar and the Florida Supreme Court. (R. 22). The district court dismissed Petitioner's complaint (R. 99). Petitioner appealed. The Fifth Circuit Court of Appeals affirmed the dismissal holding that the Integration Rule was not invalid on its face, and consequently, that Petitioner's attack on it was premature.

ARGUMENT

Nothing in the record warrants review by this court of the decision below.

The court below decided only that the Integration Rule was not invalid on its face and that since no facts had been developed in the Florida proceedings from which the application of the rule in Petitioner's case and its effect on him could be evaluated, a decision of the constitutional issue was premature.

The court below was clearly right in refusing to hold the Integration Rule invalid on its face. The mere fact that The Florida Bar, as an agency, prosecutes and adjudicates grievances in the initial stages (subject to review by the Supreme Court of Florida) does not warrant any inference that the individual members of the Board of Governors are biased against him. In fact, the Integration Rule shows on its face the scrupulous care which the Florida Supreme Court has taken to eliminate potential bias by making sure that the functions of prosecution and adjudication are separated in different individuals.

Under the Integration Rule the first step in any disciplinary proceeding is an investigation by a local grievance committee which acts somewhat like a grand jury. Its only function is to investigate allegations of misconduct by members of the Bar and determine whether or not to recommend a finding of probable cause by the Board of Governors. The grievance committee has no power to do more than investigate and recommend.[2] If the grievance committee recommends a finding of probable cause, it prepares a record and a report and files these with the Executive Director of The Florida Bar.[3] No formal complaint may be issued unless the Board of Governors adopts the recommendations and finds that probable cause exists.[4] If the Board does find probable cause, a referee is appointed to conduct a hearing. Although the Board of Governors appoints the referee, the appointment must be from a list of persons approved by the Supreme Court of Florida.[5]

At this stage in the proceedings, the Board of Governors appoints an attorney to prosecute the grievance in the name

[2]Rule 11.04.
[3]Rule 11.04 (5) (b).
[4]Rule 11.05.
[5]Rule 11.05 (4).

of The Florida Bar.[6] The referee conducts a hearing after formal pleadings.[7] The accused attorney has the right to appear as a witness and to have witnesses subpoenaed in his behalf. After the hearing, the referee submits his report to the Board of Governors. The report includes a transcript of the proceedings and the referee's findings of facts and recommendations. Bar counsel and the accused attorney are each entitled to file statements in support of or in opposition to the findings and recommendations of the referee. The record then is referred to a reviewing committee made up of five members of the Board of Governors, which prepares a written report of its recommendations. The report is considered by the Board, but if two members of the reviewing committee disagree as to the guilt of the accused attorney, a quorum of the entire Board of Governors must review the record to insure protection of the accused's rights. Only after this procedure has been followed may the Board of Governors enter a judgment of guilty.[8]

But even then the determination is not final. All judgments of the Board of Governors are subject to review by the Supreme Court of Florida. The scope of its review was described in *In re Harper*, 1956, 84 So.2d 700, where the Supreme Court wrote:

> Disciplinary proceedings by The Florida Bar are essentially a function of this court. While the local committees and the board of governors are not techni-

[6]Rule 11.06 (4) (a). Rule 11.03 (5) precludes Bar Counsel from being a member of the Board of Governors, of a grievance committee, or of the panel of referees. In addition, under Rule 11.03 (7) former members of the Board of Governors and of the grievance committees are precluded for a stated period of time from either representing accused attorneys or acting as referees. Former members of grievance committees are prohibited from representing accused attorneys or the Bar in any proceeding in which they have previously been involved.

[7]Rule 11.06.

[8]Rule 11.06 (9).

> cally judicial tribunals, their findings and recommendations should be considered as those of an intermediate agency of this court. They are in fact an arm of this court dealing with a vital function of the court and under its exclusive jurisdiction . . . While the power to render the ultimate judgment in these cases is vested in this court, the findings and recommendations of the constituted officers of The Bar are entitled to receive due consideration and are of persuasive force.

Petitioner is admittedly entitled to due process of law in the grievance proceedings against him, but the mere fact that the functions of prosecution and initial adjudication are combined in one agency does not deprive petitioner of that right.

We recognize that if members of the Board of Governors had a pecuniary interest in the results of their decision, due process would be denied. By the same token if members of the Board were personally interested in prosecuting Petitioner for some other reason, due process would probably be denied. But whether the individual members of the Board of Governors are biased or bias ought to be inferred depends on the facts of the case, not on the abstract structure of the rules under which the proceeding is conducted. The ultimate question is whether bias exists in Petitioner's case. This cannot be determined until the proceedings against him have been allowed to run their course. The proceedings have not been fully applied to Petitioner. He wants a decision on the constitutionality of the proceedings in the abstract before they have been applied.

This Court has traditionally refused to decide constitutional questions before decision of them is necessary and then only on the precise facts of a particular case.[9]

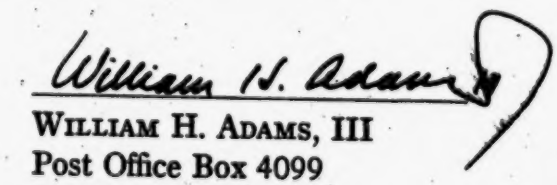
[9]Rescue Army v. Municipal Court, 331 U.S. 549 (1946).

Neither the Supreme Court of Florida nor the courts below have decided the constitutional issues raised in the petition. They have held only that those issues should be decided after the facts have been developed. Petitioner may raise particular objections in the course of the Florida proceedings to any aspect of those proceedings which he considers improper. If The Bar and the Supreme Court of Florida should ultimately rule against his objections, the constitutional issues would be ripe for consideration by this court. Until then, any decision of those issues would be hypothetical.

CONCLUSION

The Integration Rule is not invalid on its face. Petitioner's complaint seeking an injunction was premature. The courts below were right in refusing to decide his case in the abstract. The petition does not specify any reason why this court's supervisory power should be invoked. The petition should, therefore, be denied.

Respectfully submitted,



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

CARL G. SWANSON,

Petitioner,

versus

THE FLORIDA BAR, ET AL.,

Respondents.

On Petition for Certiorari to the United States Court of Appeals, Fifth Circuit

---

REPLY BRIEF OF PETITIONER

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

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THE FLORIDA BAR, ET AL.,

Respondents.

REPLY BRIEF OF PETITIONER

Petitioner Carl G. Swanson for reply herein submits:

ARGUMENT

1. The respondents in their brief admit on Page 4, et seq, that a committee of lawyers of the Florida Bar prosecutes and adjudicates grievances under the integrated rule, carries out the investigatory and accusatory processes, appoints its referee and its own prosecuting attorney to conduct the proceeding, enters a judgment of guilty, and finally, admits on Page 6 that the functions of the investigative,

prosecutive and adjudicatory processes are combined and carried out by such committee.

The rules and admissions constitute the facts apparent on the face of the integrated rule and they cannot be denied. Indeed, no other reasonable construction could be made of the rule and any other facts involving the constitutional issue here are irrelevant and immaterial.

This case does not involve the constitutional rights of a person lately placed under arrest where facts are necessary to determine whether such a person's rights were invaded. It is a case where Federal jurisdiction was invoked asking that the court determine the constitutionality of the law and rule and decide petitioner's case. The facts set out in the complaint should be taken as 100% true on the face of the original pleading for the purpose of any writ sought, and no other facts are involved.

If a person being prosecuted under an ex post facto law applied to the Federal courts for an injunctive constitutional relief, where the law was enacted after the commission of the offense, it would be unconstitutional. In this case it appears on its face, as well as, being admitted in the respondents' brief that we have the same simple situation because the functions of investigator, prosecutor, judge and jury are combined, and under no circumstances could be said that the trial being accorded petitioner is a public trial in a public tribune.

2. The respondents, in their brief, do not and cannot cite any case holding such laws and procedures constitutional. They cannot do so because there are none. But the respondents cite Rescue Army vs Municipal Court, 331 U.S. 549 (1946) seeking to prevent adjudication of petitioner's

constitutional rights, and *this case is not in point or applicable here.*

Unlike the Army Rescue case, which involved a direct appeal from a California appellate court to the Supreme Court of the United States after a new trial had been granted by an appellate state court and before a final judgment, this is a case where Federal aid is requested in seeking relief on Federal constitutional questions originating in the U.S. District Court, for the Middle District of Florida, to determine the constitutionality of the so-called integrated rule which offends the Federal Constitution whether on its face or as it affects petitioner who is being tried under the rule or law.

In other words, we are here seeking certiorari to a *final judgment* of the District Court of the United States for the Middle District of Florida where the cause was dismissed and affirmed by the United States Court of Appeals for the Fifth Circuit. *This is a Federal question involving a final judgment of the Federal Court.*

CONCLUSION

We are not required to show that bias or prejudice exists in the committee of lawyers or that there was a personal interest or professional jealousy existing where prejudice may be implanted against an accused, indeed *it is only necessary if such a thing could happen as pointed out in the petition herein.*

Title 28 United States Code, Section 1254 (1) was enacted by the Congress so that the Federal courts could determine such constitutional questions and any construction

other than that allowing petitioner his constitutional rights, would render the Section meaningless.

A reading of the case *"In Re Schlesinger, Pa. 1961, 172 A2d 835"* cited in the petition, leaves no doubt of the constitutionality of the integrated rule.

It is therefore urged that petitioner's application for certiorari be granted and the serious constitutional questions determined.

Respectfully submitted,

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